



**Washington
Friends of
Farms and
Forests**

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Washington State Department of Agriculture
Endangered Species Program
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RE: Comments from Washington Friends of Farms & Forests on the draft "Washington State Endangered Species Protection Plan for Pesticide Use"

Thank-you for the opportunity to comment on the draft "Washington State Endangered Species Protection Plan for Pesticide Use." Washington Friends of Farms & Forests members include large and small crop producers from every corner of Washington State, lawn and tree applicators, golf course superintendents, aerial applicators, food processors, retail pesticide dealers and more. Nearly all of them have already been affected by endangered species issues. Development and implementation of this plan is of great interest to them.

We applaud the Washington State Department of Agriculture's (WSDA) efforts to develop a state initiated endangered species plan with the intent of injecting local knowledge and local control into the complex and heated issue of pesticides and endangered species. To date, far too many decisions about pesticides and endangered species have been made through the courts or the federal system without input from those who know and understand local topography and local practices.

Specific comments are as follows:

On page three, three components of the plan are identified. The first component should be modified from "reducing uncertainty for pesticide registration decisions..." to "reducing uncertainty for pesticide effect determinations..." If effect determinations are made with complete and accurate data, presumably, the need for any type of registration decision will be eliminated or greatly reduced.

The second component should be modified to include interaction with the registrant(s) and to include data regarding exposure and risk. Pesticide use does not equate to exposure or risk.

The third component should be modified to read, "Provide a process for pesticide users to ensure that any mitigation measures required by EPA are developed in such a manner as to minimize impact on both the economics and pest management objectives of users." This component comes into play only after real data shows that a given pesticide poses jeopardy to an endangered species. At every step in the plan, local expertise should be used to ensure that negative impacts on agriculture and other users are minimized.

The same changes to these three components should be made in the plan summary on page eleven.

On pages three and seven, the plan refers to its goal of providing protection for endangered species. That is the mission of NOAA-Fisheries and the US Fish and Wildlife Service (USFWS), from here on referred to as the services. In RCW 15.04.400, the legislature directs the department of agriculture to promote and protect agriculture. In RCW 15.04.402, the legislature directs the department "to enhance, protect, and

perpetuate the ability of the private sector to produce food and fiber. Additionally, the department shall seek, consistent with its regulatory responsibilities, to maintain the economic well-being of the agricultural industry and its dependent rural community in Washington State.”

The plan's mission should be redirected to focus on protecting agriculture from economic harm by avoiding and/or minimizing any further restrictions to pesticide use beyond the federal label. Creation of the WSDA Endangered Species Program was supported by the agricultural industry based on this premise.

The top of page five refers to homeowners and other entities. First, WSDA must make every effort to differentiate the potential for impact from urban use and from agricultural use. If EPA determines restrictions are necessary in urban areas, use by licensed professional applicators should be differentiated from homeowners. It may be easier to regulate use by licensed applicators, but it does not follow that such regulation would provide the greatest benefit for the species.

On page seven, the plan is presented in three phases. Phases 1 and two should be modified to include the exchange of data and information with registrants. Any data or information WSDA shares with EPA or the services should be shared at the time, and in the same format, with all relevant registrants. Registrants play a key role in this process. Good communication with them can help fill data gaps and further the understanding of the product and its uses by WSDA, EPA and the services.

One key role for WSDA is to proactively use local data to assist in effect determinations made by EPA. Because WSDA crop, pesticide usage and water monitoring data is much more specific to the salmonid evolutionary significant unit (ESU) than anything EPA or the services have, it should be an important part of the effects determination process.

In phase one, on page nine, salmon specific surface water monitoring is named fourth on a list of information WSDA will provide to EPA to assist with effect determinations. The water monitoring data collected so far by WSDA clearly shows minimal, if any, risk to salmon from pesticides use. This data should be emphasized. It is the most current, most specific data in existence for making determinations. Historically, neither EPA nor the services have had this type of data to use. They are less likely to respect its value if WSDA plays down the significance of its own data.

On page ten, phase three discusses the development of county bulletins. The final sentence of the section states that “WSDA would like to participate.” If state resources are going to continue to be spent on this project, there needs to be a stronger commitment than that. As stated above, there must be some sort of formal agreement between WSDA, EPA and the services to ensure that local data, including water-monitoring data, is fully used.

The plan appears to skip from “may effect” to developing mitigation measures. The Endangered Species Act requires several more steps in between. To minimize negative effects on pesticide users, each step must be fully carried out. While it is EPA’s responsibility to carry out these steps, WSDA can and should play a supporting role for the protection of Washington State applicators. First, there must be a determination of “likely to adversely effect” for a particular product in particular locations. WSDA’s data must be used to assist EPA in reaching a “not likely to adversely effect” determination if possible.

County bulletins come into play only following a determination of “jeopardy.” In some cases, county bulletins may be used to avoid a “jeopardy “ determination. This option should be used with care and with significant participation by users to ensure the least possible disruption to Washington State agricultural and other user groups.

The plan does not clearly identify EPA or the services willingness to use WSDA generated data. To ensure that state resources are used efficiently, this plan should include a memorandum of understanding or a plan developed jointly with EPA and the services to ensure that all data generated by WSDA fits with the processes and protocols used by the federal agencies and that it is consistent with the new counterpart regulations for consultation.

The plan should recognize that at some point in the future, all endangered species must be dealt with. For the time being, it is appropriate to focus solely on salmonids. However, USFWS should be included wherever NOAA-Fisheries is named both because of their responsibility for bull trout and because the counterpart regulations for consultation were promulgated by USFWS.

Thank-you again for the opportunity to comment on this draft plan. We look forward to seeing the revised version and cooperating with its implementation.

Sincerely,

Heather Hansen
Executive Director